Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of:	)	
	)	
Telephone Number Portability	)	CC Docket No. 95-116
	)	RM 8535
	)	

Reply Comments of the United States Telephone Association on Further Notice of Proposed Rulemaking

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SUMMARY

The Commission's decisions in this docket should recognize two different aspects of cost recovery for local number portability, both of which must be "competitively neutral": the method of allocating of the costs to all telecommunications providers, and the method by which all carriers then "recovery" the funds to pay for these costs.

Under the 1996 Telecommunications Act, the Commission must reject proposals where the costs of number portability are not borne by all telecommunications carriers. Before addressing policy issues, the Commission should begin with those policy questions which have already been answered by Congress, and expressed in unambiguous statutory language: all costs of local number portability must be borne by from all telecommunications carriers on a competitively neutral basis. There is no authority in the statute or otherwise for the Commission to exclude any costs of local number portability, or any telecommunications carrier, from sharing in this burden.

Many commenters agree that, with respect to Type 1 costs associated with shared SMS databases, the language of the statute is unambiguous. The Commission may not, therefore, allocate costs only to those carriers using the SMS. All telecommunications carriers in a given region should bear a proportionate share of the costs. The proportionate share must be determined based on an allocation mechanism which does not exclude certain carriers. Thus, the Commission cannot permit SMS administrators to allocate costs to carriers based on their share of presubscribed lines or telephone numbers.

The preferable allocation mechanism is to allocate costs based on each telecommunications carrier's retail revenues. Use of retail revenues best focuses on what carriers actually receive from selling services to consumers, and thus provides a better estimate of each carrier's ability to bear the costs. Using gross telecommunications revenues less charges paid to other carriers does not achieve equitable results because certain types of carriers then subtract out substantial dollar amounts from their revenue measure, leading to distortions. No carrier should report revenues less the cost of a key input, whether that input is the access services used by interexchange carriers, the cell sites and switching used by CMRS providers, or copper wire used by LECs. Carriers who provide services through resale should not subtract out the wholesale rates they pay to underlying carriers - that results in measuring profits, not revenues.

Retail revenues should also be used to allocate costs associated with upgrades to specific carrier's networks which are directly related to local number portability. Many comments suggest that although Type 1 costs must be allocated to all telecommunications carriers under the "unambiguous" language of the statute, other costs of local number portability can be excluded based on policy considerations. But policy questions which have been answered by Congress in

unambiguous language cannot be reconsidered by the Commission. Therefore, an neutral, third-party administrator should allocate all carrier-specific costs to all telecommunications carriers, proportionate to their retail revenues.

Allocation of carrier-specific costs to all telecommunications carriers is required by the plain language of the Act, and in order to ensure "competitive neutrality." As the record reflects, the vast majority of local number portability costs are associated with network upgrades to LEC networks; of these costs, incumbent LECs will bear the highest burden. Yet all carriers will benefit from these upgrades. And, if incumbent LECs bear these costs alone, they will face a competitive disadvantage when competing for a particular subscriber, against a competitor who will have obtained the benefit of portability for free. This is not competitively neutral.

Yet certain commenters go so far as to argue that requiring the costs of local number portability to be borne by all telecommunications carriers in fact violates competitive neutrality. But this conclusion assumes that the statute is internally incoherent. Interpreting the statute as a sensible whole cannot permit this result. And Congress did not likely intend to exclude the vast majority of the costs of local number portability from the statutory requirement. And, if allocating Type 1 costs to all carriers is competitively neutral, then Type 2 costs which similarly benefit all carriers can be allocated in a similar fashion.

Analogies to other industries or fully competitive markets are not helpful. Obsolescence in facilities for manufacturing automobiles is likely to be within the discretionary control of management. But unlike other industries, incumbent local exchange networks were constructed based on depreciation lives, rates of return, and limits on the prices of goods and services which were (and still are) imposed by state and federal governments. Automobile manufacturers are not required by law to invest in and maintain facilities to ensure every American an affordable automobile, nor to sell or lease its facilities and products to competitors at prices below average cost. The local exchange market is in a transition to competition, and carrier-specific costs of local number portability are costs of this transition. Consequently, these costs should be borne by all telecommunications carriers who benefit.

Incumbent LECs have no incentive to increase these costs. Where all carriers bear a share of the costs, any increase in the costs cannot be imposed on other competitors, but will be borne by the carrier causing the increase. As evidence of this incentive, USTA recently asked the Commission to reconsider a number of decisions in order to deploy number portability on a more cost-effective basis, including permitting LECs to use the Query-on-Release enhancement to the LRN method, to exclude carriers with a de minimis presence in one of the top 100 MSAs from the accelerated deployment schedule, and to recognize that the Act does not require the additional expense of portability for non-geographic numbers.

Also, in order to ensure that all carriers bear only the burden of carrier-specific costs which are directly related to the local number portability mandate, USTA recommends that the costs of AIN enhancements should subtract out any revenues earned from other services provided with the use of that enhancement. For many small and mid-size LECs, market forces and customer demand are such that this calculation may show that carriers would have incurred a loss in making such investments. This is persuasive evidence that such costs would not have been incurred absent the local number portability mandate, and in that case, those costs should be eligible for treatment as costs of local number portability.

Recovery of local number portability costs by each carrier should be accomplished through a specific charge, calculated as a percentage of revenues, and identified as a local number portability surcharge. Recovery through local rates, access rates, interconnection rates, or unbundled elements is less preferable. Congress intended to remove public interest subsidies from service rates. These rates are facing competitive pressures and could not bear external costs. This is particularly true for access costs, where customers can bypass access through unbundled elements. Recovery through negotiated rates for unbundled elements, in turn, could create delays in interconnection agreements and in the deployment of number portability. A surcharge on retail purchases avoids these concerns.

Arguments that identifying local number portability charges would not be competitively neutral are absurd. It is difficult to see how providing customers with explicit information about improvements to the network which are needed to promote competition is disparaging or could discourage customers from taking advantage of competitive opportunities. And it is even more difficult to claim that such charges are misleading, particularly as compared to burying the costs in existing service rates. On this basis, the California Department of Consumer Affairs supports a similar explicit charge.

The Commission should adopt principles for the allocation of costs of local number portability, including carrier-specific costs, to all telecommunications carriers on a competitively neutral basis. The Commission should also find that a surcharge on retail purchases, explicitly identified as a local number portability charge, is the preferable mechanism for all carriers to raise and recover the funds to pay for their allocated share of costs.

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INTRODUCTION

The United States Telephone Association (USTA) respectfully submits its reply comments on local number portability cost recovery in the above-referenced proceeding.[1] USTA is the principal trade association of the Local Exchange Carrier (LEC) industry, and has been an active participant in all phases of implementing local number portability. USTA members will be both providers and beneficiaries of local number portability.

DISCUSSION

The record reflects some confusion regarding terms. For example, some parties appear to utilize the terms "recovery" and "allocation" interchangeably or without definition. See, e.g., Comments of Time Warner at 7-8; Comments of Sprint at 5; see also Notice, para. 213 ("recovery of the costs ... should be allocated in proportion to..."). It is imperative to distinguish between the method of "allocating" the costs of local number portability to all telecommunications carriers from the method by which these carriers then "recover" the funds to

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[1] In the Matter of Telephone Number Portability, First Report and Order and Further Notice of Proposed Rulemaking, FCC 96-286, CC Docket No. 95-116 (July 2, 1996)("Further Notice").

pay for these costs.[2] See, e.g., Comments of GSA at 9; Notice, at 221-222.

No commenter discussed the import of the Commission's decisions regarding cost recovery for number administration and dialing parity in the Second Report and Order on interconnection and in the NANP Order.[3] The statute deals with the costs of number administration and number portability identically, see 47 U.S.C. § 251(e)(2), thus these decisions are directly relevant to cost recovery for local number portability. The Commission determined in the NANP Order that the costs of number administration will be allocated to all telecommunications carriers in proportion to their revenues. NANP Order, 11 FCC Rcd at 2627-2629; Second Report and Order, para. 336; Id., para. 342.

The Commission also noted that dialing parity was similar to number portability and determined that, as with number portability, carrier-specific costs, including software upgrades, network upgrades and consumer education costs strictly related to dialing parity would be eligible for cost recovery. See Second Report and Order, para. 93-95. Thus, the Commission has already determined that the costs of number portability include carrier-specific costs, and that the costs of number portability must be recovered from "all telecommunications carriers," in order to comply with the statute.

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[2]In some respects, it is more accurate to state that carriers must first collect the funds to pay for their allocated share of number portability costs, rather than expend them and later "recover." Most (if not all) carriers do not (and will not) have an existing source of capital to devote to their allocated share of number portability costs. See Comments of NTCA and OPASTCO at 7 (many small LECs are financially unprepared to incur the costs of significant network upgrades).

[3] See Second Report and Order and Memorandum Opinion and Order, CC Docket 96-98, FCC 96-333 (August 8, 1996)("Second Report and Order"); Report and Order, 11 FCC Rcd 2588 (1995)("NANP Order").

I. Under the 1996 Telecommunications Act, the Commission Must Reject Proposals Where The Costs of Number Portability Are Not Borne By All Telecommunications Carriers

Some of the initial comments in this proceeding do not begin their analysis with the statutory language, but with a discussion of preferred policy outcomes. Resolution of local number portability cost issues should begin with the policy decisions already made by Congress., e.g., which carriers must bear the costs of local number portability. Specifically, the Commission should be careful to begin with the specific language of Section 251(e)(2): the costs of local number portability must be borne by "all telecommunications carriers," and they must be borne "on a competitively neutral basis." 47 U.S.C. § 251(e)(2).

As many commenters noted, these provisions are unambiguous, particularly the phrase "all telecommunications carriers," since that term is defined in the statute at 47 U.S.C. § 153(44). See, e.g., Comments of Time Warner at 5. Reading the provisions together as part of a coherent whole, it would be inappropriate to conclude that Congress intended the phrase "competitively neutral" to require that costs be borne by some telecommunications carriers, but not others. With respect to the costs of an SMS shared by many carriers (Type 1 costs), there is widespread support in the record for this proposition.[4] This proposition should also apply to all other costs which are "costs of local number portability," including carrier-specific costs.

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[4] See, e.g., Comments of Time Warner at 5 (no entity meeting the definition of "telecommunications carrier" should be excluded); Comments of Omnipoint at 3 (statutory term includes IXCs and resellers, not just LECs); Comments of MFS at 6 (Telecommunications Act is unambiguous); Comments of WinStar at 3-4 (same); see also Comments of California Dept. of Consumer Affairs at 21 (requiring one class of carriers to bear the full cost of LNP will be unfair to the customers of those carriers and not "competitively neutral.").

A. Shared SMS "Type 1" Costs Must Be Borne By All Telecommunications Carriers

Some commenters suggest that the costs of establishing regional SMS systems which will be utilized by carriers providing local number portability should be allocated only to carriers using those database systems. See, e.g., Comments of MCI at 3-9; Comments of AT&T at 6-12. These carriers argue that the costs of a regional SMS should be recovered by spreading the costs through discrete rate elements to be charged to local exchange carriers or other parties loading, updating, uploading/downloading, or testing the SMS system. In particular, MCI recommends that the majority of the SMS costs be allocated to all local service providers through a porting carrier allocation charge, based on either of two allocation methods which use a carrier's share of local telephone numbers or NXXs. See Comments of MCI at 5. Scherers Communications Group similarly argues that the arrangement for 800 portability has established the precedent, and that number portability SMS costs should be recovered the same way as 800 portability costs. Comments of SCG at 2. But neither allocating costs only to carriers using the SMS, or doing so on the basis of telephone numbers, is permitted under the Telecommunications Act.

Allocating costs only to carriers who use the database is inconsistent with the Communications Act.[5] Costs of a regional database used to provide local number portability

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[5]The Telecommunications Resellers Assn. (TRA) also agrees that levying industry-wide number portability costs only on those carriers that use the databases would violate the Act, although it reaches that conclusion based on the premise that such a cost allocation arrangement would favor incumbents, in violation of the "competitively neutral" requirement of the Act, because CLECs will make far greater initial use of the number portability databases. Comments of TRA at 7. This premise may be derived from a misunderstanding about the SMS functions which USTA addressed in Appendix B of its Comments. There USTA explained that the shared database facilities (SMS) do not respond directly to queries, but rather provides periodic downloads of records to other databases which respond to queries. See USTA Comments, Appendix B. There is no basis to conclude that one LEC will make

are clearly "costs of local number portability." Under the Act, these costs must be borne by "all telecommunications carriers." But under the MCI and AT&T proposal, interexchange carriers, resellers,[6] and other carriers which are "telecommunications carriers" bear no share of the costs of the SMS. See also Comments of SCG at 3 ("Any carrier who provides service through pure resale of another carrier's service or who provides service that does not require a telephone number should not be held responsible").

Allocating costs only to carriers who use the databases is not a preferable policy. AT&T claims that a revenue allocation mechanism would be difficult to implement. The Commission's tentative proposal would not be difficult to implement: those carriers which are "telecommunications carriers," are identified by the statutory definition, and already report revenues for other purposes. See Comments of USTA at 13, n.9 (describing the TRS Fund Worksheet Data compiled by the Commission and use of gross revenues in calculating regulatory fee payments). Using gross retail revenues as the basis for cost allocation, as USTA recommends, is no more difficult.

AT&T also claims that the Commission's tentative conclusion would not provide individual carriers with incentives to efficiently utilize the SMS.[7] But where carriers expect to

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greater use of the databases than another, as a percentage of its own traffic.

[6]USTA's argument that resellers are not excluded by Section 153(47) of the Act does not mean that resellers should bear their share of the costs twice - once through an allocation factor, and again in the wholesale rates they pay to facilities-based carriers. Rather, USTA presumes that facilities-based carriers would recover their share of the costs of number portability through mechanisms other than their wholesale service rates.

[7] AT&T claims that a revenue-based allocator would not provide individual carriers with incentives to efficiently utilize the SMS because their costs would be based not on their use of the SMS but on their revenues. Comments of AT&T at 10. This misstates the relationship of costs to the cost allocator. A carrier's share of costs would be based on

incur some portion of the overall cost, they have no incentive to inflate their own cost burden by inefficient use of the SMS. Contrary to AT&T's contention, the Commission's tentative conclusion is neither difficult or inefficient. Rather, since all carriers benefit from the database, it is sound policy for all carriers to bear the costs. See Notice, para. 213, n.611.

Allocation of costs based on a carrier's share of telephone numbers is also inconsistent with the Act. Allocating costs only among local exchange carriers would exclude telecommunications carriers who do not assign telephone numbers from the cost burden. Thus, this allocation factor is not consistent with the Communications Act. See Comments of MFS at 6 ("apportionment based on line counts fall disproportionately on local telephone carriers, and not on all telecommunications carriers, as required by the plain language of the Telecommunications Act")(emphasis in original).

Allocation on the basis of numbers is also not preferable as a matter of economics and policy. MCI believes that allocating costs in proportion to total working telephone numbers rather than revenues is superior on both equity[8] and efficiency grounds. MCI's efficiency argument claims that because demand for numbers is more inelastic than demand for revenue-producing services, the deadweight loss from decreased consumption will be less if the cost burden is allocated on the basis of numbers. Comments of MCI at 7.

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revenues, but the dollar amount of that share would be based on the total costs, which each carrier using the SMS has an incentive to minimize.

[8]The equity argument essentially attempts to correlate consumer benefits to cost allocation - MCI claims that allocating costs in proportion to revenues is inequitable because consumers of some services would not benefit from number portability in proportion to the ad valorem "tax" they pay for number portability. Comments of MCI at 7. But this conflates questions of allocation and recovery. A revenue-based allocator would not allocate costs across services, nor would it specify that any particular service rate reflect the costs. Thus, a revenue based allocator would not impose inequitable costs on consumers.

Essentially, MCI advocates the use of numbers as an allocator because it is unlikely to impose any costs on MCI which would be flowed through to MCI customers, thereby reducing the demand for MCI services. At the same time, incumbent LECs and new LECs who assign local numbers must flow those costs through to the costs of their telecommunications services. Thus, any "deadweight loss from decreased consumption" is not avoided, but falls on local services. As a matter of economics, MCI cannot avoid the fact that the revenues to match costs must come from customers of telecommunications services (either through increased rates or from an explicit charge on customers of those services). The Commission should not encourage the allocation of shared SMS costs based on telephone numbers.

The preferable allocation method is to allocate costs to all telecommunications carriers in a given region or state served by the SMS, based on each telecommunications carrier's retail revenues. Use of retail revenues is preferable to gross revenues because it focuses on what carriers actually receive from selling their services to consumers, see Comments of Bell Atlantic at 5, and thus provides a better estimate of each carriers' ability to bear the costs.

Using gross telecommunications revenues less charges paid to other carriers, see Notice, para. 213, does not achieve equitable results because certain carriers then subtract out substantial costs from their revenue measure, leading to distortions. All carriers should report their retail revenues without subtracting out key inputs. Interexchange carriers should not subtract out access charges any more than CMRS providers should subtract out the costs of cell sites and switching, or than LECs should subtract out the costs of copper wire and telephone poles. Carriers who provide service through resale should not subtract out the wholesale rates they pay to other carriers - that results in measuring profits, not revenues. The Commission should use retail service revenues to perform cost allocation.

B. Other Local Number Portability Costs Must Also Be Borne by All Telecommunications Carriers on a Competitively Neutral Basis

Many comments suggest that carrier-specific costs required to implement the number portability functionality should simply be borne by each carrier incurring those costs. See, e.g., Comments of Omnipoint at 4; Comments of MFS at 3; Comments of AT&T at 12. Not one of these arguments discusses the language of the Act which is forcefully described as "unambiguous" elsewhere in the same comments: that the costs of number portability are to be borne by "all telecommunications carriers."[9] No party disputes that carrier-specific costs are not "costs of local number portability."[10] Rather, they argue, variously, that: 1) no allocation mechanism is needed to ensure competitive neutrality, 2) that allocating carrier-specific costs to all telecommunications carriers would in fact violate competitive neutrality, and 3) that policy reasons should not require these costs of number portability to be borne by all telecommunications carriers. But some allocation to all telecommunications carriers is necessary to ensure compliance with both of the statutory requirements. Policy questions which have been answered by Congress in unambiguous terms cannot be reconsidered.

Some commenters appear to argue that no allocation mechanism is needed to ensure that these costs are borne by all telecommunications carriers on a competitively neutral basis. But absent a regulatory allocation mechanism, there is only one way that these costs can be borne by all telecommunications carriers on a competitively neutral basis: carriers incurring

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[9] Compare Comments of MFS at 6 with Comments of MFS at 3; Comments of Omnipoint at 3 with Comments of Omnipoint at 4-5; Comments of WinStar at 2 with Comments of WinStar at 6.

[10] The Commission has already found that carrier-specific costs are eligible for cost recovery. In the Second Report and Order the Commission stated that "the costs of long-term number portability that could be recovered ...include installation of number portability-specific switch software, [and] implementation of SS7 and IN or AIN capability." Second Report and Order, para. 95.

those costs effectively perform the allocation function themselves by reflecting those costs in charges to other telecommunications carriers.

But the commenters advocating that carriers bear their own costs argue that the Commission must prohibit such charges. See Comments of MFS at 3; Comments of ALTS at 6; Comments of MCI at 9-10; but see Comments of AT&T at 16 (LECs can include number portability costs in rates for unbundled elements and resold services). Not one of these commenters explains how costs will then be borne by "all telecommunications carriers," as required by the Telecommunications Act.

Rather, their position appears to be that such costs are simply "not recoverable." See, e.g., Comments of MFS at 5 (*"MFS reiterates that carrier-specific costs associated with number portability should not be recoverable"*)(emphasis in original); Comments of WinStar at 7-8. What MFS means by "not recoverable" is unclear. MFS may simply intend to say that allocation of these costs to all telecommunications carriers should be prohibited. Or, MFS may simply mean all telecommunications carriers will bear the costs, but may not charge their own customers or other carriers for those costs - corporate shareholders must pay for local number portability. In either case, it is difficult to imagine a position more directly contrary to the intent of the Act. The former arrangement results in the costs of local number portability being borne only by some carriers. And the latter arrangement is not competitively neutral.

No commenter explains how this proposal is competitively neutral, based on the Commission's interpretation of that term. The Commission defines "competitive neutrality" to mean that no carrier should have a cost disadvantage when competing for a specific customer. Notice, para. 210. Even more simply put, competitive neutrality means that the requirement to deploy number portability should not affect a customer's choice of carrier. But where one carrier must bear a relatively greater share of the costs of number portability, and reflect that

burden in its prices, customers will be incented to choose the lower-cost carrier.[11] As the record demonstrates, incumbent LECs will bear a relatively greater share of the costs of number portability. See, e.g., Comments of California Dept. Of Consumer Affairs at 20. Thus, if an incumbent LEC must reflect that burden in its prices, such an allocation of costs would not be competitively neutral.[12] Rather, other telecommunications carriers would obtain a "free ride," contrary to Congressional intent. See Id. at 21 (CLECs and their customers should bear some proportionate share of ILECs' costs of implementing LNP).

These commenters in fact claim that the "competitive neutrality" language requires that certain costs of local number portability not be borne by all carriers. See, e.g., Comments of WinStar at 6 ("including a carrier's individual network costs ...would undermine the principle of competitive neutrality"). This argument is incorrect for at least three reasons. First, such an application of the "competitive neutrality" requirement would be inconsistent with the unambiguous phrase "all telecommunications carriers" - the statute must be interpreted as a

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[11]The Commission's principles of competitive neutrality, which were almost universally accepted by all parties, reflect this understanding. See Notice, para. 210 (competitively neutral cost recovery mechanism should not give one service provider a cost advantage over another); see also Comments of Cincinnati Bell at 6 (customers must be equally impacted).

[12]It is no answer to note that while incumbent LECs may initially have greater costs, they will also have more customers over which to spread those costs. Number portability will initially result in customers moving from the ILEC to a competitor, leaving the incumbent's remaining customers to bear an even larger share of the costs. See Comments of Calif. Dept. of Consumer Affairs at 21. Where the incumbent LEC bears the cost of converting the network to portability, then loses the customer, that customer no longer contributes to the incumbent's costs, and the new LEC has obtained the benefit of portability yet borne no share of the costs. This violates competitive neutrality, particularly where the new carrier is dependent on the incumbent's network to provide service. Also, many small and mid-size incumbents will have significantly higher per-customer costs than their competitors because of the status of their networks. And, some CLECs may have fewer customers, but because they serve only high-volume customers, have higher revenues.

sensible whole. At the same time, the record shows that the vast majority of the costs of local number portability are associated with upgrades to individual carrier networks. It would eviscerate Congressional intent to exclude the majority of the costs of local number portability from those borne by all carriers. Congress must have intended that carrier-specific costs could be included as "costs of local number portability" and treated as such.

Finally, the point of competitive neutrality is to determine whether the allocation of costs results in a particular carrier or set of carriers having a competitive cost advantage. If allocating costs in proportion to revenues is sufficient to create a competitively neutral allocation for costs of a shared SMS, it must also be sufficient to create competitive neutrality for carrier-specific costs. Including individual carrier costs in the set of costs borne by all telecommunications carriers does not inherently violate competitive neutrality.

The arguments justifying a non-neutral allocation of these types of number portability costs to certain types of carriers ignore the plain language of the Act and base their arguments on policy considerations. These policy arguments rely on a common theme: the Commission should impose competitive market forces by requiring each carrier to bear its own costs. Where all telecommunications carriers bear the burden of carrier-specific costs, they argue, there is an incentive to deploy number portability inefficiently and impose costs on competitors. See, e.g., Comments of AT&T at 12; Comments of WinStar at 7-8.

MFS and other parties argue that allowing firms to recover any and all cost changes is a legacy of a regulated monopoly environment, which has no place in the competitive environment envisioned by the Telecommunications Act. See, e.g., Comments of MFS at 3. Omnipoint argues that a carrier who has already developed a system that can accommodate long-term number portability should not be required to underwrite the costs of bringing the networks owned by incumbent LECs into compliance. Omnipoint argues that the Commission

should adopt a cost recovery mechanism which, like a competitive market, would punish incumbent LECs for installing outdated technology. Comments of Omnipoint at 4-5.

Allocation of the carrier-specific costs of local number portability will not encourage inefficiency. Where all carriers bear the costs, no carrier can impose any increases in its own costs on competitors without bearing the burden of its own increases. Purchasing inefficient technology and raising costs would simply result in a higher total cost. Under USTA's proposal, the only way a carrier could reduce the dollar amount of its share of total number portability costs would be to adjust the allocation factor, i.e., reduce its own revenues. Carriers are not likely to increase competitors; costs in that manner.

And the suggestion that carriers should be regulated by nothing but competitive market forces in these circumstances is extreme. Both Congress and the Commission recognize that it would be inappropriate to ignore the legacy of the regulated environment in which incumbent LECs constructed their facilities. The Interconnection Order, among other things, explicitly describes a "transition from monopoly to competition." First Report and Order, CC Docket 96-98, FCC 96-325 (August 8, 1996)("Interconnection Order"), para. 20. Certainly new entrant LECs would not support immediately permitting incumbent LECs to price all services on an unregulated, competitive market basis, free from tariff or cost allocation restraints. Thus, it is incorrect to say that immediate competition is the only environment envisioned by the Telecommunications Act for allocation and recovery of the costs of local number portability. Rather, the burden of the transition to long-term number portability, including the burden of carrier-specific modifications, falls on "all telecommunications carriers."

MFS' analogy to the imposition of air bags on both Ford and Toyota, Comments of MFS at 5, is inapposite. The analogy holds insofar as, like air bags, the costs of number

portability are non-discretionary.[13] But unlike the status of automobile manufacturing plants, the status of incumbent LEC networks (and thus their disparate cost burden) is also largely non-discretionary. Ford did not construct its facilities based on depreciation lives, rates of return, and limits on the price of cars imposed by state and federal governments. And, incumbent LECs' ability to respond to cost changes is also largely non-discretionary.[14] Ford is not required to manufacture automobiles and sell them to Toyota at prices below average cost. Ford is not required by law to invest in and maintain facilities to ensure every American an affordable automobile, while competing against companies who are free to construct facilities and price services at their own discretion. The status of the incumbent LEC's network reflects not individual business decisions which should be favored or punished by competitive market forces, but decisions by regulators about how much the public should pay for phone service.

As a matter of policy, the Commission should encourage efficient use of resources. But the Commission can (and must) do so consistent with the language of the Act. As discussed earlier, cost allocation across all telecommunications carriers means that all carriers have an incentive to keep costs low. As proof of this, USTA and a number of LECs have recently asked the Commission to reconsider its decision to effectively preclude a carrier's ability to utilize the "Query-on-Release" (QoR) enhancement to LRN-based number portability precisely in order to save costs and deploy number portability more efficiently. See, e.g., USTA Petition for Reconsideration, CC Docket 95-116, (August 29, 1996) at 10. Incumbent LECs have also advocated methods to reduce the costs of deployment by requiring the

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[13]Thus, SCG is incorrect to state that company-specific portability costs are the product of individual business decisions. See Comments of SCG at 5.

[14]The California Dept. of Consumer Affairs notes that in a fully competitive marketplace, providers often decide to recover their costs by charging higher prices for their most inelastic services -- in the case of telecommunications, that is basic service. Comments of California Dept. of Consumer Affairs at 22. This is not an option open to incumbent LECs.

presence of a competitive carrier who makes a specific request, and by exempting carriers who have a de minimis presence in an MSA from the more aggressive deployment schedule. See, e.g., Id, at 14-18. And incumbent LECs have asked the Commission to recognize that the Act does not require the additional costs of portability for 500 and 900 numbers. See Id., at 11. Even without knowing what the cost recovery mechanism will be, incumbent LECs strongly support a variety of measures expressly designed to deploy local number portability in an efficient, cost-effective manner. This is further evidence that there is no incentive for any carrier to make uneconomic upgrades to its network.[15]

C. The Costs of Number Portability Include All Costs Which Would Not Have Been Incurred Absent the Mandate to Deploy Number Portability

Few commenters provided any meaningful arguments in support of the Commission's tentative conclusion to exclude certain costs of local number portability from recovery on an absolute basis. Specifically, the Commission tentatively concluded that because the costs of upgrading SS7 capabilities or adding intelligent network (IN) or advanced intelligent network (AIN) capabilities are associated with the provision of a wide variety of services, and will facilitate the ability of incumbent carriers to compete with the offerings of new entrants, these costs are not directly related to the provision of number portability. Notice, para. 227. Many commenters agree. See, e.g., Comments of SCG at 2; Comments of AT&T at 17 ("By excluding these costs ... the Commission will ensure that carriers continue to make decisions regarding these network modifications based on market forces and customer demand for

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[15]Notably, many of the same parties who argue that the Commission should read past the plain language of the Act to consider economic efficiency are the same parties who argued that economic factors could not be read into the Act when determining the number portability deployment schedule or architecture. Compare Comments of ALTS at 5-7 (each carrier bears its own costs to promote economic efficiency) with Comments of ALTS, CC Docket 95-116 (April 5, 1996), at 3 (USTA argument that the public interest is served by avoiding inefficient costs is "truly an audacious argument").

capabilities and services").

But the Commission has also recognized that many incumbent LECs do not already have these network capabilities and will be required to install them to provide number portability. The Commission attempted to address the issue by limiting deployment to areas where incumbent carriers would likely install such upgrades solely for competitive reasons. Notice, para. 228. But the Commission must recognize that there are many cases where LECs must incur costs of this type, and will do so for no other reason than a regulatory mandate.

As USTA explained in its initial comments, there are at least over a hundred carriers who would not have upgraded their networks for competitive reasons but now must do so under the number portability mandate. Using the AT&T criteria mentioned above, market forces did not require such upgrades, and customer demand for services is insufficient to justify the expense of the investment. While the Commission has made a reasonable estimate at determining where competition would incent these upgrades, that estimate is understandably imperfect. The cost recovery mechanisms should make allowances for costs which are not incurred "for competitive reasons," but exclusively due to the number portability mandate.

Understandably, no parties other than incumbent LECs are concerned about the exclusion of these number portability costs from those to be recovered by all telecommunications carriers is a matter of concern. Rather, these carriers expect to avoid the burden of these number portability costs. See, e.g., Comments of AT&T at 17; Comments of MFS at 3-4, and expect the benefits of the resulting upgrades to the ILEC's network for free.

But no party explains how treating costs in such a manner is consistent with the language of the Act. These costs are quite directly "costs of number portability" and must be borne by all telecommunications carriers. Where the regulatory mandate requires LECs to

make premature investment decisions which are relatively more costly, competitive neutrality requires all carriers, including competing LECs and IXCs, to bear a proportionate share.

The mechanism to avoid any concerns about including these costs is not to exclude such costs, but to determine the validity of all costs submitted, see Comments of SBC at 11, and to require any cost figures submitted to first subtract any revenues gained from other services using the AIN, SS7 or other functionality. If competitive market forces and customer demand are in fact significant enough to justify these investments, such revenues will exceed the costs submitted for allocation. Effectively, requiring the prior subtraction of these revenues results in no costs being borne by other carriers except where the investment could not be justified apart from the number portability mandate.

Both TRA and SCG, among others, refer to the 800 number portability experience as relevant. See, e.g., Comments of TRA at 13; Comments of SCG at 3. As USTA explained in its comments, the treatment of SS7 costs associated with 800 number portability is not relevant to the treatment of AIN or other costs associated with local number portability, because it is not possible for LECs to implement this aspect of local number portability by leasing upgraded facilities from others - each LEC switch must have the LNP capability itself. See Comments of USTA at 9. With respect to certain SS7 costs, however, these costs can be recovered similar to the SS7 services used to provide 800 portability. A make/buy decision is permitted with respect to the STP or SCP pairs used to obtain LRN routing instructions, and therefore USTA suggests that these costs would be excluded from a national recovery mechanism. Comments of USTA at 7.

II. Consumers Will Be Best Served By An Explicit Local Number Portability Charge On All Retail Telecommunications Services

A. Existing Local and Access Rates And Rates for Interconnection, Unbundled Elements, And Resale Are Less Preferable Mechanisms For Cost Recovery

Once costs are allocated to all telecommunications carriers in a competitively neutral manner, each carrier must determine how to obtain the revenues needed to pay their share of these costs. As the Commission is well aware, Congress intended to remove public interest subsidies from existing rates for access and local rates. These rates are facing regulatory and competitive pressures and could not bear external costs such as number portability costs, as the transition to a competitive market progresses. Including internal subsidies for the cost of network modifications intended to benefit the public interest, such as local number portability, would be inconsistent with the Commission, state regulatory, and industry efforts to adjust access and local rates to eliminate such internal subsidies. And, as Bell Atlantic explained, exogenous adjustments to price cap indexes for access would be ineffective where customers can bypass those rates and obtain unbundled elements. Comments of Bell Atlantic at 7.[16]

It is true, as AT&T notes, that the costs of local number portability are part of the costs of local switching, and therefore could be recovered in the pricing of unbundled network elements and/or wholesale rates for local exchange services. Comments of AT&T at 16. But recovery through unbundled elements or wholesale rates - like any system of cost recovery through inter-carrier charges will introduce confusion into the process of determining the proper allocation of costs. Recovery through negotiated rates for unbundled network elements

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[16]There is also no way the Commission could treat local number portability as a new "price cap service," with a separate basket and new rate elements, as suggested by MCI. Comments of MCI at 13. Specific charges only to those customers who port numbers are not likely to result in a competitively neutral recovery of local number portability costs. It is unclear how else number portability "rate elements" would be assessed.

could lead to similarly situated carriers bearing different shares of costs, would likely create uncertainty and delay the deployment of number portability. As the exact costs for local number portability are only estimates at this point, this could also create delays in negotiating the prices of unbundled elements, thus delaying the formation of interconnection agreements.[17] Consequently, a surcharge on retail purchases is a preferable recovery mechanism.[18]

B. Explicit Charges Do Not Violate the "Competitively Neutral" Requirement

A few parties suggest that identifying specific charges on customer bills as local number portability charges would not be "competitively neutral." See, e.g., Comments of Teleport at 10; Comments of ALTS at 4. The basis for this argument is that labeling charges related to number portability as such is inherently disparaging and misleading to consumers. Comments of ALTS at 4; see Comments of Teleport at 10 ("explicit surcharges are not competitively neutral ...because they would promote hostility toward number portability as a concept and toward potential competitors as users of the numbers.")

It is difficult to see how providing consumers with explicit information about improvements to the network (which are intended to benefit consumers through increased competition and its attended benefits) is "inherently disparaging." And it is more difficult still to see how providing consumers with this explicit information is "misleading," particularly as

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[17]As one local competitor noted in a similar context, "No business can start selling a product before it is able to price its inputs. Without prices, it is impossible to execute -- or even make -- a business plan or to obtain necessary capital for expansion." Letter from Jonathan Sallet, Counsel for MCI, to The Hon. Anne K. Bingaman, Asst. Atty. General for Antitrust, June 17, 1996, at 3.

[18]Of course, to the extent that a retail end user is also a telecommunications carrier, they would not be exempt from such charges. But resellers who purchase wholesale would receive their own cost allocation; wholesale service rates would not reflect any number portability costs of underlying facilities-based provider(s).

compared to burying the costs in increased service rates. As the California Department of Consumer Affairs so aptly stated, consumers must be aware of the amount they are paying for local number portability. "[We do] not believe that potential consumer dissatisfaction about the cost of providing LNP is an adequate basis for failing to disclose that cost to consumers." Comments of Calif. Dept. of Consumer Affairs at 22-23.

The California Department of Consumer Affairs advocates an "all end user surcharge," similar to that advocated by USTA in its initial comments, based on a percentage of the end user's total telephone bill. Id.. All carriers should have the ability to utilize the revenue surcharge, since all carriers must participate in the cost burden. Thus, surcharges based on a percentage of a service bill or a fixed amount derived from a percentage of a carrier's share of the costs are superior to a uniform charge assessed on each presubscribed line, as that type of charge would omit carriers who do not provide service through presubscription.

CONCLUSION

The Commission should adopt principles for allocation of the costs of local number portability, including carrier-specific costs, to all telecommunications carriers on a competitively neutral basis, consistent with the unambiguous language of the statute, the record of initial comments, and the analysis provided above. The Commission should also find that a surcharge on retail purchases, explicitly identified as a local number portability charge and assessed by all telecommunications carriers, is the preferable mechanism for all carriers to raise and recover the funds to pay for their allocated share of local number portability costs.

Respectfully submitted,

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